

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

WENDELL L. BROWN, ET AL.	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 1:04CV862LG-RHW
	§	
CITY OF GULFPORT, ET AL.	§	
Defendants,	§	

**MEMORANDUM OPINION AND ORDER DENYING
DEFENDANTS' MOTION TO QUASH AND TO DISMISS**

THIS MATTER COMES BEFORE THE COURT on the Motion to Quash and to Dismiss filed by Ken Combs on May 25, 2005. Plaintiffs tendered a timely response. After consideration of the Motion, the pleadings on file, and the relevant legal authority, the Court finds that the Motion should be denied for the reasons that follow.

Plaintiffs are proceeding *pro se* and filed a Bill of Exceptions and Petition for Writ of Mandamus in the state court. Both cases were removed to this Court and thereafter consolidated. The record reflects that subsequent to the Court's order entered on April 13, 2005, summons was issued on May 2, 2005. The summons named Ken Combs, in his official capacity and the City of Gulfport. Plaintiffs delivered a copy of the summons and their petition to City Clerk Amelia Bordeaux on or about May 5, 2005.

Ken Combs, specially appearing, now moves to quash service of process under FED. R. Civ. P. 4 and for dismissal pursuant to FED. R. Civ. P. 12(b)(2) on the grounds that Plaintiffs' attempt to serve him by delivering summons and the complaint to the City Clerk was insufficient to confer jurisdiction over him individually. In accord with Miss. R. Civ. P.

4(d)(7) and the Court's previous determination that Combs Plaintiffs have sued Combs in his **official** capacity and not his individual capacity, the instant Motion filed by Ken Combs should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED, that the Motion to Quash and Dismiss pursuant to FED. R. CIV. P. 4 and 12, filed May 25, 2005, [25-1, 25-2] should be, and is hereby **DENIED**.

SO ORDERED AND ADJUDGED this the 29th day of March, 2006.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE